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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,594	09/19/2000	William R. Bullman	BULLMAN 7-26-6	5797

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EXAMINER

PERILLA, JASON M

ART UNIT	PAPER NUMBER
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2634

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/665,594

Applicant(s)

BULLMAN ET AL.

Examiner

Jason M Perilla

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: the argument is not persuasive, see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant's arguments filed May 12, 2004 have been fully considered but they are not persuasive.

Regarding the applicant's arguments against the 35 USC § 103(a) rejections including the prior art reference Bellenger et al (6058110), Bellenger et al clearly discloses a DSL modem. The Examiner does not concede that the DSL modem of Bellenger is not a "true" DSL modem. Because the modem of Bellenger operates in a DSL band, it is properly considered to be a DSL modem. The Applicant may be correct that the DSL modem of Belleger is not precisely equivalent to the DSL modem which the Applicant had intended for the instant application. However, the Applicant has not provided specific limitations of the "envisioned" DSL modem to properly distinguish it from the DSL modem of Bellenger. The fact that Bellenger discloses that the "DSL band modem" disclosed may be cheaper than an alternative DSL modem does not render the "DSL band modem" unfit for characterization as a DSL modem. Indeed, it is properly interpreted to be a DSL modem for the reason that it uses the DSL band. The Applicant would need to provide distinguishing limitations to the claimed DSL modem to distinguish it from the DSL modem of Bellenger. Further, the Examiner, although not intending to alter the scope of the rejections set forth, notes to the Applicant that DSL modems are well known in the art, and the substitution of the "DSL band" modem of Bellenger with any "true DSL" modem however intended by Applicant is a plainly obvious case given the state of the art regarding teachings available for DSL modems.

Regarding the applicant's arguments against the 35 USC § 103(a) rejections of Lechleider et al (6091713) in view of Bellenger et al, Lechleider et al does not teach away from the use of a combination voice band/DSL band modem. Indeed, Lecheider et al does not *teach* anything in the combination of Lechleider et al in view of Bellenger et al because Lechleider et al is the primary reference. Lechleider et al does disclose that after the testing a communications line with a voice band modem, it could be replaced with a DSL band modem. Regardless, the teaching of Bellenger et al is the use of a combination or "dual band" (fig. 1, ref. 110) voice/DSL modem with the testing of the communications line disclosed by Lechleider so that one modem would not need to be replaced by another. *The Examiner has presented a combination of references closely analogous in the art which are obviously working towards the solution of a single difficulty encountered in the art. The Applicant's assertion that there is no motivation to combine is based upon the fact that there is **no single encompassing** statement of motivation present in the references. However, while the motivation statements provided in the prior art rejections set forth below may be partially dependent upon knowledge of one skilled in the art, they are nonetheless appropriate. The Examiner does not need to rely upon some sort of "teaching command" to simply tell one skilled in the art to use the references together. Rather, for one having skill in the art, the prior art references of Bellenger and Lechleider, when interpreted and considered together, obviously combine advantageously to meet the limitations of the instant application.*


Further regarding the applicant's arguments against the 35 USC § 103(a) rejections of Lechleider et al (6091713) in view of Bellenger et al, the combination of

Lechleider et al in view of Bellenger et al does disclose and suggest that the combination voice band/DSL band modem of Bellenger et al is utilized such that, in the event of a service line disruption, the modem could make an adjustment to the bandwidth without having to disconnect one modem and reconnect another because the two modems are combined together in a "dual band" modem. For instance, if the connection was lost, the analog portion of the modem would "troubleshoot" or attempt to reconnect (Bellenger et al; fig. 9; col. 11, lines 7-15), and it would re-determine the suitability of the service line. The process of re-determining the service line characteristics as shown in figure 9 of Bellenger et al is performed without the disconnection/reconnection of either the voice band or DSL band modem because they are combined into one modem.

Regarding the Applicant's arguments against the 35 USC § 103(a) rejections including Vogt, III et al (5625667), the Applicant should not only look for teachings discloses by Vogt, III et al, but also consider the fact that the teachings of Vogt, III et al are notoriously known in the art. In fact, the teachings of Vogt, III et al present the only means known to man for the testing of a transmission line. Vogt, III et al simply teaches implications of the well known fundamental properties of electric charge, capacitance, and inductance as applied to the characterization of a transmission line. The Applicant is requested to be mindful that the claimed limitations which Vogt, III et al meets in the prior art rejections are already notoriously known in the art. Nonetheless, one skilled in the art would be compelled by the teachings of Vogt, III et al to implement such

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methods of characterization to arrive at the claim limitations because they are thorough and exemplary techniques.



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